

# MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1803, L.D. 1757)  
2 SECOND REGULAR SESSION  
3

4 ONE HUNDRED AND TENTH LEGISLATURE  
5

6 **Legislative Document**

**No. 2124**

7  
8 H. P. 2278 House of Representatives, April 1, 1982  
Reported by Representative Weymouth from the Committee on  
Public Utilities and printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

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10  
11 STATE OF MAINE  
12

13 IN THE YEAR OF OUR LORD  
14 NINETEEN HUNDRED AND EIGHTY-TWO  
15

16 AN ACT to Ensure Funding for the Eventual  
17 Decommissioning of any Nuclear Power Plant.  
18

19 Be it enacted by the People of the State of Maine as follows:

20 35 MRSA c. 269, sub-c. III is enacted to read:

21 SUBCHAPTER III

22 DECOMMISSIONING

23 §3351. Short title; findings

24 This subchapter may be referred to as the "Nuclear De-  
25 commissioning Financing Act."

26 The Legislature finds that timely proper decommission-  
27 ing of any nuclear power plant beginning at the time of its  
28 closing is essential to protect public health, safety and  
29 the environment at the time of closing that nuclear power  
30 plant and that the cost of decommissioning will be signifi-

1 cant. To ensure that customers who receive the benefits of  
2 these facilities pay for these decommissioning costs, the  
3 Legislature finds that it is prudent for the State to re-  
4 quire the licensee operating any nuclear power plant in the  
5 State to collect sufficient funds during the remaining  
6 useful life of the plant to pay for these costs. The Legis-  
7 lature further finds that the best way to ensure that the  
8 funds collected will be available when they are needed for  
9 decommissioning is to require that the funds be placed in a  
10 separate trust fund for each plant and invested by a trustee  
11 until they are needed for decommissioning. The Legislature  
12 further finds that it is in the public interest to have a  
13 decommissioning fund committee responsible for the prudent  
14 management of the trust fund. That committee could be  
15 licensee established, with the Public Utilities Commission  
16 approval, or publicly established, but in either case would  
17 be subject to the requirements of this Act. The Legislature  
18 further finds that funds set aside for decommissioning pro-  
19 tect the people of the State and thus serve an essential  
20 governmental function, that payment of taxes on these funds  
21 would be an unreasonable and inappropriate burden on the  
22 ratepayers and that the income earned by the fund should be  
23 tax exempt and payments made to the fund by the licensee  
24 should be tax deductible. The Legislature further finds  
25 that assurance is needed that funds will be available for  
26 the cost of decommissioning which would occur if a nuclear  
27 power plant is prematurely closed.

## 28 §3352. Definitions

29 As used in this subchapter, unless the context indi-  
30 cates otherwise, the following terms have the following  
31 meanings.

32 1. Closing. "Closing" means the time at which a  
33 nuclear power plant ceases to generate electricity and is  
34 retired from active service.

35 2. Decommissioning. "Decommissioning" means the  
36 series of activities undertaken beginning at the time of  
37 closing of a nuclear power plant to ensure that the final  
38 disposition of the site or any radioactive components or  
39 material, but not including spent fuel, associated with the  
40 plant is accomplished safely, in compliance with all appli-  
41 cable state and federal laws. Decommissioning includes ac-  
42 tivities undertaken to prepare a nuclear power plant for  
43 final disposition, to monitor and maintain it after closing  
44 and to effect final disposition of any radioactive compo-  
45 nents of the nuclear power plant.

1           3. Decommissioning expenses. "Decommissioning ex-  
2 penses" means the following:

3           A. All reasonable costs and expenses of removing a  
4 nuclear power plant from service, including, without  
5 limitation, dismantling, mothballing, removing radio-  
6 active waste material except spent fuel to temporary or  
7 permanent storage sites, decontaminating, restoring and  
8 supervising the site, and any costs and expenses incur-  
9 red in connection with proceedings before governmental  
10 regulatory authorities relating to the authorization to  
11 decommission the plant;

12           B. All costs of labor and services, including services  
13 of foremen, inspectors, supervisors, surveyors, engi-  
14 neers, counsel and accountants, performed or rendered  
15 in connection with the decommissioning of the plant,  
16 and all costs of materials, supplies, machinery, con-  
17 struction equipment and apparatus acquired for or in  
18 connection with the decommissioning of the plant. It  
19 is understood that any amount, exclusive of proceeds of  
20 insurance, realized by a licensee as salvage on or  
21 resale of any machinery, construction equipment and  
22 apparatus, the cost of which was charged as a decommis-  
23 sioning expense, shall be treated as a deduction from  
24 the amounts otherwise payable on account of the cost of  
25 decommissioning of the plant; and

26           C. All overhead costs applicable to the plant during  
27 its decommissioning period, including, but not limited  
28 to, taxes, other than taxes on or in respect of income;  
29 licenses; excises and assessments; casualties; surety  
30 bond premiums and insurance premiums.

31 Without limiting the generality of this subsection, amounts  
32 expended or to be paid with respect to decommissioning a  
33 nuclear power plant shall constitute part of the decommis-  
34 sioning expenses if they are, or when paid will be, either  
35 properly chargeable to any account related to decommission-  
36 ing of a nuclear power plant in accordance with the systems  
37 of accounts then applicable to the licensee, or properly  
38 chargeable to decommissioning of a nuclear power plant in  
39 accordance with then applicable regulations of the United  
40 States Nuclear Regulatory Commission or Federal Energy  
41 Regulatory Commission or any other regulatory agency having  
42 jurisdiction.

43           4. Decommissioning financing plan. "Decommissioning  
44 financing plan" means the plan approved by the commission  
45 under section 3353.

1           5. Decommissioning fund committee. "Decommissioning  
2 fund committee" means a committee established to have over-  
3 all responsibility, as described in section 3354, for a de-  
4 commissioning trust fund.

5           6. Decommissioning trust fund or fund. "Decommission-  
6 ing trust fund" or "fund" means a trust fund set up as pre-  
7 scribed in sections 3353 and 3355 to hold moneys for the  
8 eventual purpose of paying decommissioning expenses.

9           7. Escrow account. "Escrow account" means an account  
10 established under Public Utilities Commission rules to hold  
11 funds collected under an interim decommissioning financing  
12 plan promulgated under section 3353, subsection 5, until a  
13 decommissioning trust fund is established or to hold funds  
14 for other temporary purposes under this Act.

15           8. Licensee. "Licensee" means the holder of the oper-  
16 ating permit from the United States Nuclear Regulatory Com-  
17 mission for a nuclear power plant.

18           9. Nuclear power plant or plant. "Nuclear power  
19 plant" or "plant" means a nuclear fission thermal power  
20 plant situated in this State.

21           10. Owner. "Owner" means any electrical company which  
22 owns any portion of a nuclear power plant, whether directly  
23 or through ownership of stock in a company which owns any  
24 portion of a nuclear power plant, or through membership in a  
25 holding company which owns any portion of a nuclear power  
26 plant or through other means.

27           11. Premature closing. "Premature closing" means the  
28 closing of a nuclear power plant before the projected date  
29 of decommissioning, as projected in the decommissioning  
30 financing plan under section 3353.

31           12. Prompt removal and dismantlement. "Prompt removal  
32 and dismantlement" means to immediately remove radioactive  
33 or radioactively contaminated material down to allowable  
34 residual levels which permit release of the property for  
35 unrestricted access.

36           13. Trustee. "Trustee" means a bank or trust company  
37 qualified to act as a fiduciary in this State.

38 §3353. Decommissioning financing plans; physical decom-  
39 missioning plan

40           1. Submission of plans. Decommissioning financing  
41 plans shall be submitted as follows.

- 1           A. Any licensee receiving a certificate of public convenience and necessity under section 13-A on or after  
2           the effective date of this subchapter for a nuclear  
3           power plant shall submit a decommissioning financing  
4           plan for the plant to the commission not less than one  
5           year prior to beginning commercial operation of the  
6           plant.  
7
- 8           B. Any licensee operating a nuclear power plant on the  
9           effective date of this subchapter shall submit a proposed  
10          decommissioning financing plan for the plant to  
11          the Public Utilities Commission as soon as possible,  
12          but no later than 60 days after the effective date of  
13          this subchapter or such later date as the Public Utilities  
14          Commission may consider appropriate.
- 15          2. Content of plan. A decommissioning financing plan  
16          submitted under subsection 1 includes:
- 17           A. An estimate of the time of closing of the nuclear  
18           power plant;
- 19           B. An estimate of the cost of decommissioning the  
20           plant expressed in dollars current in the year the plan  
21           is prepared, and based upon an engineering report  
22           issued any time within 3 years of the date the plan is  
23           submitted to the commission;
- 24           C. The share of the estimated decommissioning expenses  
25           attributed to each electrical company to which the  
26           plant supplies power;
- 27           D. Plans for periodic review and updating of the plan,  
28           including the cost of decommissioning estimated under  
29           paragraph B, consistent with subsection 6;
- 30           E. Plans for establishing as soon as possible a decom-  
31           missioning trust fund adequate to pay the cost esti-  
32           imated under paragraph B, consistent with subsection 4  
33           and section 3355;
- 34           F. Plans and options for insuring against or otherwise  
35           financing any shortfall in the fund resulting from a  
36           premature closing of the nuclear power plant;
- 37           G. Reasonable assurance of responsibility in the event  
38           of insufficient assets in accordance with section 3356;
- 39           H. A general description of the stages by which decom-  
40           missioning is intended to be accomplished, but only at

1 the level of detail necessary to support the cost esti-  
2 mate of paragraph B;

3 I. If the licensee intends to establish its own decom-  
4 missioning fund committee, a statement of its intent to  
5 do so, together with its proposed membership and a copy  
6 of the proposed decommissioning trust and its plan for  
7 implementing the trust and establishing the committee;

8 J. A fully executed decommissioning financing agree-  
9 ment between the licensee and each owner, evidencing  
10 each owner's acceptance of its respective share of the  
11 ultimate financial responsibility for decommissioning.  
12 In satisfaction of this requirement, the licensee may  
13 submit existing ownership agreements together with docu-  
14 mentation from each owner of the applicability of the  
15 agreement to the case of financial responsibility for  
16 decommissioning; and

17 K. Any other information related to the financing of  
18 decommissioning which the commission requests.

19 3. Approval of plan. The plan shall be approved as  
20 follows.

21 A. The commission shall conduct a public hearing on  
22 the proposed decommissioning financing plan.

23 B. The commission shall approve the decommissioning  
24 financing plan if it finds that the licensee, in the  
25 judgment of the Public Utilities Commission, has pro-  
26 vided reasonable assurance that:

27 (1) The estimated time of closing of the nuclear  
28 power plant and the estimated cost of decommis-  
29 sioning are reasonable;

30 (2) The share of the estimated cost of decommis-  
31 sioning for each electrical company to which the  
32 plant supplies power is reasonable;

33 (3) The principal and income which will have ac-  
34 cumulated in the decommissioning trust fund at the  
35 estimated time of closing the plant will be ade-  
36 quate to cover the estimated cost of decommission-  
37 ing, plus the expenses of administering the fund;

38 (4) The provisions of the proposed form of the  
39 decommissioning trust fund will ensure that the  
40 funds in the trust are judiciously invested and

1 will adequately protect the funds until decommissioning is completed and, in the event the licensee proposes to establish its own decommissioning fund committee, that the licensee-established committee will ensure that the funds in the trust are  
2 judiciously invested and will adequately protect  
3 the funds until decommissioning is completed;  
4  
5

6  
7  
8 (5) The funds in the fund cannot be withdrawn  
9 unless approved by the decommissioning fund committee under section 3355, subsection 5, prior to  
10 completion of decommissioning;  
11

12 (6) Contributions to the fund are equitably  
13 spread over the useful life of the plant to the  
14 extent feasible;

15 (7) The plans and options for insuring against or  
16 otherwise financing any shortfall in the fund  
17 resulting from a premature closing are adequate  
18 and reasonable;

19 (8) The owners are legally bound to accept their  
20 respective shares of the ultimate financial  
21 responsibility for decommissioning, and the plan  
22 reflects full compliance with section 3356; and

23 (9) The plan will periodically be reviewed and  
24 revised to reflect more closely the costs and  
25 available techniques for decommissioning. This  
26 update shall occur at least every 5 years.

27 C. If the commission finds that the decommissioning  
28 financing plan does not meet the criteria under para-  
29 graph B, the commission shall reject the plan and order  
30 that it be modified as the commission deems necessary  
31 to meet those criteria.

32 D. The commission shall take final action on the pro-  
33 posed decommissioning financing plan within 180 days  
34 after the filing date. The filing date shall be the  
35 date when the commission notifies the applicant that  
36 the filing is complete. If the commission does not  
37 notify the applicant of any deficiencies in the infor-  
38 mation in the application within 60 days of receipt,  
39 the application shall be considered complete as of the  
40 date of receipt.

41 E. If the licensee requested approval of a  
42 licensee-established decommissioning fund committee,



1 the commission shall approve the plan, including the  
2 plans for implementing a licensee decommissioning fund  
3 committee and a decommissioning trust fund, with such  
4 modifications as the commission finds necessary to meet  
5 the criteria of paragraph B, but only if the commission  
6 finds that the plans will reasonably ensure that the  
7 responsibilities and duties of section 3354, subsection  
8 6, will be carried out, that the funds will be managed  
9 in order to ensure that they will be available when  
10 needed, and that the funds will only be used for decom-  
11 missioning expenses and the costs of administering the  
12 trust fund.

13 4. Cost of decommissioning. Based upon the plan, the  
14 Public Utilities Commission shall establish the cost of de-  
15 commissioning of any nuclear power plant located in the  
16 State and shall establish a schedule of monthly payments  
17 into the decommissioning trust fund established for that  
18 plant as necessary and convenient to meet that cost of de-  
19 commissioning at the time of closing. The cost of decommis-  
20 sioning shall not include the cost of final disposal of  
21 spent nuclear fuel. The schedule shall be established so  
22 that contributions received by the licensee are paid to the  
23 fund as soon after receipt as practicable. For purposes of  
24 cost estimates, the method of decommissioning shall be the  
25 method of prompt removal and dismantling, unless the United  
26 States Nuclear Regulatory Commission or its successor re-  
27 quires another method. The commission shall periodically  
28 review the estimated cost of decommissioning in accordance  
29 with subsection 6 and based upon that review shall revise  
30 the schedule of monthly payments as necessary

31 When establishing the cost of decommissioning under this  
32 subsection, the commission shall obtain from the licensee  
33 for information purposes a determination of any possible  
34 federal income tax liability related to funds collected for  
35 decommissioning purposes until a definitive final determina-  
36 tion has been made by the Federal Government that no such  
37 liability exists. Notwithstanding any other provision of  
38 this subchapter, the licensee may collect additional funds  
39 to establish a segregated escrow account for payment of  
40 potential federal taxes, as approved by the Federal Energy  
41 Regulatory Commission. In the event that no final determi-  
42 nation has been made by the Federal Government that no  
43 income tax liability exists related to funds collected for  
44 decommissioning, the licensee shall exercise all reasonable  
45 efforts to obtain such a determination. In no event shall  
46 the licensee pay any federal income tax liability amount  
47 from the decommissioning trust fund.

1 5. Plans required for operation. After the effective  
2 date of this subchapter, decommissioning financing plans are  
3 required as follows.

4 A. No licensee which receives a certificate of public  
5 convenience and necessity after the effective date of  
6 this subchapter may commence operation of a nuclear  
7 power plant, unless it has a decommissioning financing  
8 plan approved by the commission under subsection 3.

9 B. The Public Utilities Commission shall promulgate an  
10 interim decommissioning financing plan one year after  
11 the effective date of this subchapter for any licensee  
12 which does not have a decommissioning financing plan  
13 approved under subsection 3. Payments shall commence  
14 immediately under the interim decommissioning financing  
15 plan and be deposited in an escrow account. That  
16 escrow account may be invested in investments permitted  
17 for the trust fund under section 3355, subsection 3,  
18 paragraph B. When a decommissioning plan is approved  
19 and a decommissioning trust fund established, the  
20 interim plan shall terminate and the money in that  
21 escrow account shall be transferred to the fund.

22 6. Periodic review of plan. Decommissioning financing  
23 plans for nuclear power plants shall be reviewed as follows.

24 A. If the commission approves a decommissioning  
25 financing plan under subsection 3, the commission  
26 shall, at least every 5 years and annually in the 5  
27 years preceding scheduled closing, and annually there-  
28 after until decommissioning is completed, review the  
29 financing plan to assess its adequacy. If changed cir-  
30 cumstances make a more frequent review desirable or if  
31 the licensee requests it, the commission may review the  
32 plan after a shorter time interval. The review shall  
33 include, but not be limited to, the following consider-  
34 ations:

35 (1) The estimated date of closing the plant;

36 (2) The estimated cost of decommissioning;

37 (3) The reasonableness of the method selected for  
38 cost estimate purposes;

39 (4) The size and growth rate of the decommission-  
40 ing trust fund, taking into account the effect of  
41 inflation; and

1           (5) The adequacy of the plans for financing any  
2           shortfall required under subsection 2, paragraph  
3           F.

4           B. After review under paragraph A, the commission may,  
5           after public hearing, order such changes in the decom-  
6           missioning financing plan as it deems necessary to make  
7           the plan comply with the criteria in subsection 3,  
8           paragraph B.

9           7. Physical decommissioning plan. At least 3 years  
10          prior to closing a nuclear power plant, the licensee shall  
11          submit a physical decommissioning plan to the Governor and  
12          the commission, with updates annually thereafter. In the  
13          event of premature closing, the plan shall be submitted as  
14          soon as possible.

15          The commission shall review the plan to ascertain its  
16          contents and determine under subsection 6 the adequacy of  
17          the decommissioning fund to pay for that plan, but the com-  
18          mission shall not duplicate the health and safety review  
19          conducted by the United States Nuclear Regulatory Commission  
20          or its successor. The licensee shall file with the physical  
21          decommissioning plan a list of all decommissioning-related  
22          permits which it must receive from agencies of the State.  
23          The licensee shall thereafter update its filing annually to  
24          indicate the progress of any permit applications which it  
25          has undertaken before agencies of the State. The Public  
26          Utilities Commission shall transmit copies of this informa-  
27          tion to all agencies on the list of permits and shall place  
28          this information in a separate file which shall be made  
29          available for public inspection. Those agencies shall  
30          inform the commission when they issue any licenses or per-  
31          mits or take any other final action. No licensee may  
32          decommission a nuclear power plant unless the physical de-  
33          commissioning plan has been submitted to the commission.

34          §3354. Decommissioning fund committee

35          1. Establishment of decommissioning fund committee by  
36          the licensee. A decommissioning fund committee may be  
37          established for a particular nuclear power plant by the  
38          licensee operating that plant within one year after the  
39          effective date of this subchapter. Upon a finding by the  
40          Public Utilities Commission that this licensee-established  
41          decommissioning fund committee will be able to carry out the  
42          responsibilities and duties of subsection 6, that the fund  
43          will be managed in accordance with the requirements of  
44          section 3355 and that it is in the public interest, the com-  
45          mission may approve establishment of the committee by the

1 licensee. At that time, the Governor may appoint a voting  
2 representative on the licensee-established decommissioning  
3 fund committee.

4 2. Establishment of a public decommissioning fund com-  
5 mittee. In the event that the licensee elects not to estab-  
6 lish its own decommissioning fund committee, or in the event  
7 that the Public Utilities Commission fails to approve a de-  
8 commissioning fund committee proposed by the licensee, or  
9 the commission elects to terminate that committee for good  
10 cause shown, a public decommissioning fund committee shall  
11 be established consisting of 7 members, including the Treas-  
12 urer of State, a member nominated by the municipal officials  
13 of any municipality containing a nuclear power plant, 4 mem-  
14 bers nominated by the Governor, including 2 from the finan-  
15 cial community and 2 from the general public, and one member  
16 designated by the licensee. The Treasurer of State shall  
17 act as chairman.

18 3. Terms of public decommissioning fund committee mem-  
19 bers. Initially, the members appointed by the Governor  
20 shall draw lots for terms. There shall be a one-year term,  
21 a 2-year term, a 3-year term and a 5-year term. Thereafter,  
22 their terms shall be for 5 years. The municipal representa-  
23 tive and the licensee's representative shall be named for  
24 5-year terms. In the event of a vacancy, an interim  
25 appointment shall be made to fill the unexpired portion of  
26 the term. The Treasurer of State shall serve while holding  
27 that office. Other members shall serve until their replace-  
28 ments are sworn in.

29 4. Compensation. Members of the decommissioning fund  
30 committee shall receive compensation and be reimbursed for  
31 expenses as deemed reasonable by the Public Utilities Com-  
32 mission. They shall be paid from the decommissioning trust  
33 fund, for which services are rendered or expenses incurred.  
34 Members of a licensee-established committee shall not be  
35 entitled to any compensation under this subsection

36 5. Conflict of interest. Except for the licensee's  
37 representative and members of a licensee-established decom-  
38 missioning fund committee, members of the committee shall  
39 have no direct or substantial indirect financial interest in  
40 any nuclear power plant covered by this subchapter in any  
41 company which owns directly or indirectly any portion of a  
42 nuclear power plant covered by this subchapter or in any  
43 institution involved in managing or handling a decommission-  
44 ing trust fund.

1       6. Responsibilities and duties. Whether established  
2 by the licensee or otherwise, a decommissioning fund commit-  
3 tee is responsible for the prudent management of the decom-  
4 missioning trust fund in order to assure that the principal  
5 and income which will have accumulated in the fund at the  
6 time of closing the nuclear power plant for which it was  
7 established will equal the cost established in the decommis-  
8 sioning financing plan approved by the commission. The spe-  
9 specific duties of a decommissioning fund committee are to:

10       A. Appoint the trustee;

11       B. Approve selection of other financial managers, if  
12 any, by the trustee;

13       C. Establish investment policy;

14       D. Evaluate investment policy and trustee performance;

15       E. Establish procedures for expenditures from the fund  
16 for decommissioning and administrative expenses; and

17       F. Such other duties as it finds necessary to carry  
18 out their responsibilities.

19       7. Report; audit. The decommissioning fund committee  
20 shall report annually to the Governor, the Legislature and  
21 the Public Utilities Commission on its activities and the  
22 status of the decommissioning trust fund. It shall also  
23 report to the owners of any nuclear power plant in the State  
24 on its activities relating to that plant and on the status  
25 of the associated fund. The report shall contain a break-  
26 down of all administrative expenses. A decommissioning fund  
27 committee shall cause an annual audit to be made of each de-  
28 commissioning trust fund.

29       8. Separate committee for each plant. There shall be  
30 a separate decommissioning fund committee for each nuclear  
31 power plant covered by this subchapter. Members may serve  
32 on more than one decommissioning fund committee.

33       9. Modification. In the event and to the extent that  
34 it is necessary in order to establish the tax exempt status  
35 of payments to or income of the decommissioning trust fund,  
36 the decommissioning fund committee shall, subject to the  
37 approval of the Public Utilities Commission, modify its  
38 structure and procedures, including if necessary changing  
39 from any licensee-established trust committee established  
40 under subsection 1 to a public trust committee established  
41 under subsection 2, provided that no such modification may

1 be contrary to the purpose for which the trust was estab-  
2 lished under this subchapter.

3 §3355. Decommissioning trust fund

4 1. Trustee. The decommissioning fund committee shall  
5 select a trustee or trustees to execute the policies set by  
6 the decommissioning fund committee and manage the money  
7 within a decommissioning trust fund in order to ensure that  
8 it will be available when needed and, insofar as possible,  
9 consistent with protection of the principal, so that it may  
10 grow to keep pace with inflation or faster. Preference may  
11 be given to financial institutions incorporated in the State  
12 if consistent with their fiduciary responsibility, but only  
13 if they meet the criteria for trustees established by the  
14 decommissioning fund committee. That committee may, by a  
15 majority vote of its entire membership, change trustees at  
16 any time. Any trustee shall be subject to the same duties  
17 and may exercise the same powers as trustees under Title  
18 18-A, Article VII, and the provisions of the decommissioning  
19 trust to the extent that they are not inconsistent with this  
20 subchapter. The trustee may appoint subsidiary financial  
21 managers, subject to approval by the decommissioning fund  
22 committee. Any fees charged by the trustee shall be subject  
23 to review by the Public Utilities Commission

24 2. Tax exemption. The following tax exemptions apply  
25 to the decommissioning trust fund.

26 A. Payments to a decommissioning trust fund shall be  
27 considered a necessary operating expense of the licen-  
28 see and shall be tax deductible for state income tax  
29 purposes. All income of the fund shall also be exempt  
30 from state income taxation, as long as the fund is to  
31 be used exclusively for the purposes of decommissioning  
32 and the licensee may not use the fund for any other  
33 purpose.

34 B. It is the intent of this subchapter that payments  
35 to a decommissioning trust fund be considered a neces-  
36 sary operating expense to the licensee and exempt from  
37 federal income tax. It is also the legislative intent  
38 that all income of the fund be exempt from federal  
39 income taxation.

40 3. Restrictions. The following restrictions apply to  
41 the decommissioning trust fund.

42 A. All funds collected by any licensee for decommis-  
43 sioning shall be immediately segregated from the compa-

1 ny's assets and amounts not subject to refund or re-  
2 quired to pay tax liabilities shall be transferred to  
3 the trustee for placement in the decommissioning trust  
4 fund established for the licensee's plant. Amounts  
5 collected for decommissioning, but subject to refund or  
6 required to pay tax liabilities, shall be deposited in  
7 a separate escrow account.

8 B. The assets in a decommissioning trust fund may only  
9 be invested in secure assets as follows:

10 (1) The bonds, notes, certificates of deposit or  
11 other obligations issued or guaranteed by the  
12 United States or by any agency or instrumentality  
13 of the United States;

14 (2) The bonds, notes, certificates of deposit or  
15 other obligations issued or guaranteed by any  
16 state or by any agency, instrumentality or polit-  
17 ical subdivision of any state, provided that  
18 securities are rated within the 2 highest grades  
19 by any rating service approved by the Superinten-  
20 dent of Banking;

21 (3) The bonds and other obligations of any United  
22 States corporation, provided that they are rated  
23 within the 2 highest grades by any rating service  
24 approved by the Superintendent of Banking; or

25 (4) Until a definitive final determination has  
26 been made by the Federal Government that the  
27 income of the fund is exempt from federal income  
28 taxation, the assets in the fund may be invested  
29 only in securities exempt from federal income  
30 taxation.

31 The assets in a fund shall not be invested in the  
32 securities of the owner of any nuclear power plant.  
33 The decommissioning fund committee may impose such  
34 other restrictions as it deems necessary or desirable.

35 C. Except as provided in section 3354, subsections 1,  
36 2 and 5, a decommissioning trust fund shall be adminis-  
37 tered only by persons not normally involved with opera-  
38 tions of the licensee or any owner of a nuclear power  
39 plant within the State.

40 D. Neither the licensee nor any other owner of any  
41 nuclear power plant in the State may receive any bene-  
42 fit from funds remaining in the decommissioning trust  
43 fund after completion of decommissioning.

1           E. All income of a fund shall be accumulated and added  
2 to the principal of the fund, except as otherwise pro-  
3 vided in subsection 5.

4           F. Any indenture of trust governing the decommission-  
5 ing trust fund is subject to review and approval by the  
6 commission. That indenture of trust shall contain a  
7 provision that it shall be amended as necessary to con-  
8 form to any future changes in state law or regulation.

9           4. Contributions to the fund. The trustee of a decom-  
10 missioning trust fund shall bill the licensee operating the  
11 nuclear power plant for which the fund was established and  
12 the licensee shall make payments to the trustee of the fund  
13 in amounts and on a schedule determined by the Public Utili-  
14 ties Commission in accordance with section 3353, subsection  
15 4.

16           5. Expenditures from the fund; payments for costs of  
17 decommissioning. At the time of decommissioning, the decom-  
18 missioning fund committee shall authorize the trustee to  
19 make payments as necessary from the fund to the licensee to  
20 cover actual decommissioning expenses in accordance with the  
21 decommissioning plan authorized by the United States Nuclear  
22 Regulatory Commission or its successor. The decommissioning  
23 fund committee may not approve any withdrawal for this pur-  
24 pose prior to completion of decommissioning, unless the  
25 physical decommissioning plan has been received and reviewed  
26 by the Public Utilities Commission under section 3353, sub-  
27 section 7.

28           The decommissioning fund committee may authorize withdrawals  
29 from the fund as necessary to pay reasonable expenses for  
30 administering the fund. No other withdrawal may be made  
31 prior to the commencement of decommissioning without the  
32 approval of the commission and unless the withdrawal is for  
33 the purpose of paying reasonable expenses related to decom-  
34 missioning.

35           6. Expenditure of money remaining after decommission-  
36 ing. Upon termination of decommissioning, the commission  
37 shall conduct a final audit of the decommissioning trust  
38 fund. The commission may by rule, if the public interest  
39 requires, establish a decommissioning contingency reserve at  
40 that time. If there are assets remaining in the fund  
41 attributable to a given plant, after its decommissioning has  
42 been completed, those assets shall be returned, in propor-  
43 tion to their payments, to the owners and any other persons  
44 who originally made payments to the licensee for decommis-  
45 sioning purposes in accordance with the order or orders of



1 any regulatory agency having jurisdiction. No portion of  
2 the remaining assets in a fund may accrue to the benefit of  
3 the licensee.

4 An electrical utility in the State which receives remaining  
5 decommissioning funds under this subchapter shall distribute  
6 the funds equitably, under the guidance of the commission,  
7 to its customers.

8 7. Public Utilities Commission review for licensee-  
9 established committee. Notwithstanding any other section of  
10 this subchapter, if the decommissioning fund committee is  
11 established by the company under section 3354, subsection 1,  
12 withdrawals from the fund shall be reviewed and approved by  
13 the Public Utilities Commission. No withdrawal may be  
14 approved, except for the purpose of paying reasonable  
15 expenses related to decommissioning or to the administration  
16 of the fund.

17 8. Separate fund for each plant. There shall be a  
18 separate decommissioning trust fund for each nuclear power  
19 plant covered by this subchapter. The assets of these funds  
20 shall not be commingled in any way.

21 §3356. Responsibility for decommissioning

22 1. Decommissioning trust fund. In the first instance,  
23 the cost of decommissioning shall be paid from the decommis-  
24 sioning trust fund established for the plant being  
25 decommissioned.

26 2. Licensee responsible. If the assets of the decom-  
27 missioning trust fund are insufficient to pay for the cost  
28 of decommissioning, the licensee shall be responsible for  
29 the additional cost.

30 3. Insufficient assets. In case the assets of the  
31 licensee are insufficient to cover the remaining cost of de-  
32 commissioning after the decommissioning trust fund is  
33 exhausted, the owners are jointly and severally liable for  
34 the safe and proper decommissioning of that nuclear power  
35 plant. If, under this subsection, any in-state owner pays  
36 decommissioning expenses in excess of its ownership share in  
37 the plant, that owner shall have a cause of action to  
38 recover that excess from the other owners. The Attorney  
39 General shall assist in bringing such an action.

40 4. State not financially responsible; protective ac-  
41 tion. The State shall have no financial responsibility for  
42 decommissioning. If the Governor finds that, because of

1 inadequate action by the responsible parties in carrying out  
2 decommissioning, protective action is reasonably required to  
3 protect the public health and safety, the State may under-  
4 take that action. In that case, the Attorney General shall  
5 bring action against the fund, the licensee and the owners  
6 to recover the cost of that protective action. Expenses  
7 incurred by the Department of the Attorney General in bring-  
8 ing that action shall be paid from the decommissioning trust  
9 fund.

10 5. Additional expense in rates. The Public Utilities  
11 Commission shall include, as an allowable operating expense,  
12 in calculation of authorized rates, additional decommission-  
13 ing funds actually supplied by an electrical utility in the  
14 State, to the extent these are just and reasonable.

15 §3357. Incorporation by reference; construction

16 To the extent that they are not in conflict with this  
17 chapter, chapters 15 and 17 shall apply to this chapter.  
18 This subchapter shall be construed liberally in order to  
19 achieve the purposes stated in this chapter.

20 §3358. Cost of review

21 The licensee shall submit to the commission, with the  
22 initial filing of a decommissioning financing plan under  
23 this subchapter, a filing fee as determined by the commis-  
24 sion, but not to exceed \$35,000, in order to assist in cov-  
25 ering the cost of review by the commission. Within one year  
26 after establishment of a decommissioning fund under this  
27 subchapter, the licensee may recover the licensing fee from  
28 the fund. Notwithstanding any other provision of law, money  
29 received from the filing fee shall be segregated, appor-  
30 tioned and expended by the Public Utilities Commission for  
31 the purposes stated in this section, with a report to the  
32 joint standing committee of the Legislature having jurisdic-  
33 tion over appropriations and financial affairs. Any unex-  
34 pended funds from the filing fee shall be transferred to the  
35 decommissioning trust fund after approval of the plan.

36 §3359. Enforcement

37 All provisions of this subchapter shall be enforced by  
38 the Attorney General, with the cost of enforcement paid from  
39 the decommissioning trust fund.

1 STATEMENT OF FACT

2 Maine Yankee Nuclear Power Plant will complete its  
3 depreciable life in 2002, after 30 years of operation. That  
4 year has been used in rate cases as the estimated year of  
5 decommissioning, although the operating license extends to  
6 2008 and operational considerations could lead to actual de-  
7 commissioning occurring either earlier or later. For finan-  
8 cial planning purposes, an assumed date of closing and de-  
9 commissioning of 2002 seems reasonable. Maine Yankee has  
10 selected prompt removal and dismantling as the method of de-  
11 commissioning. The estimated cost is \$57,511,000. The  
12 Public Utilities Commission has already approved collection  
13 of \$684,000 annually for decommissioning from ratepayers in  
14 the most recent Central Maine Power Company rate case.

15 The purposes of this new draft are the same as the  
16 original bill: To establish a decommissioning trust fund to  
17 be financed by regular payments from the licensee operating  
18 any nuclear power plant; to provide for prudent management  
19 of the fund by a trustee, under the guidance of a decommis-  
20 sioning fund committee; and to provide assurance that funds  
21 collected for decommissioning will be segregated for decom-  
22 missioning purposes only and that they will not be subject  
23 to income taxation for either state or federal tax purposes.

24 The new draft also makes it clear that the licensee has  
25 the ultimate responsibility for decommissioning and that if  
26 the resources of the fund are insufficient, the licensee and  
27 owners are liable. The State has no financial responsibil-  
28 ity for decommissioning.

29 In the event that the licensee can set up a satisfac-  
30 tory fund committee that meets all the criteria, that  
31 licensee-established committee will be established instead  
32 of the public committee.

33 This new draft makes numerous technical changes in the  
34 bill.

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